8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

Modern Procedure

682 692 Cases of individual homicide are nowadays often tried by a Major Court[1] convened under the Code of Criminal Procedure of the country. This always applies in cases of murder, since murder is not triable by Chiefs' Courts.[2] The slayer is tried under the Penal Code for murder or, if the act is qualified by one of the five mitigating circumstances laid down, for culpable homicide not amounting to murder.[3] These circumstances can be reasonably adapted to Nuer standards, and the implications are well understood, since murder is *biem*, though even here 'grave and sudden provocation', one of the mitigating circumstances, might still apply in circumstances which the Nuer classify as *biem*. All other forms of homicide are simply *nak*. In the case of a murder for which sentence of death is passed and executed, compensation (*thung*) is naturally not paid, although the kinsmen of the murdered man often demand it. The State has assumed the role of the avenging kinsmen. Where the sentence is commuted to life imprisonment, the indemnity is usually paid.

The more straightforward forms of killing, which take place in collective hostilities, in brawls when the feelings of the participants are roused to extremes of passion, or in sudden unpremeditated quarrels, usually fall within the mitigating circumstances and, as culpable homicide not amounting to murder, may, with the permission of the District Commissioner, be tried by Chiefs' Courts.[4] There are naturally occasions when an act of homicide quickly leads to extensive hostilities and the chiefs appointed by the Government are either unwilling or afraid to intervene and restrain their fellows. In such circumstances the intervention of State police armed with rifles is sometimes necessary. Normally, especially in the more advanced parts of Nuerland—for the effectiveness of Nuer courts is not everywhere the same—the chiefs, their headmen, and tribal police quickly regain control. It is rare that a killer attempts to conceal his guilt, even if in the heat of the battle there are no witnesses, and he will usually give himself up to the nearest authority after performing the necessary purificatory ritual with a Leopard-Skin Chief. Other persons involved are put under arrest, and in most cases a number of cattle are seized, often from both parties and in excess of the number which will later be required as compensation. These are held as surety. A meeting of the court is quickly called, and the relative guilt of the parties is determined. Sentences of imprisonment, sometimes up to the maximum powers granted by law, are imposed on the killer or killers, and

682 695

[1] Consisting of a Magistrate of the First Class and two lesser Magistrates. Some Nuer chiefs are Magistrates of the Third Class for the purpose of sitting on Major Courts.

[2] Chiefs' Courts Ordinance.

[3] Sudan Penal Code, Section 249.

[4] Chiefs' Courts Ordinance, 1931.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

those who participated in or instigated the affair are punished. Fines are often imposed collectively on one or both sides and collected with the minimum of delay. A Leopard-Skin Chief is then appointed by the court to conduct the ceremonies of composition, and these are carried out strictly according to the procedure already described.

682
695

It would of course be idle to pretend that all acts of homicide are dealt with so rapidly and efficiently, but in this sphere—in circumstances where public security is most obviously and severely threatened—Nuer courts are surprisingly effective. At any rate, during my time in Central Nuer District there were not many occasions when I had to intervene to restore order, though I was, of course, called in to confirm the judgement of the courts. Indeed, there was one occasion when I interfered too hastily by sending mounted police to round up the culprits and their cattle. As a result I was publicly and most soundly rebuked by the elder statesmen of the area, and was told that such matters should be left to the chiefs themselves. Many feuds were quickly settled during my absence when I was away from the district on leave, sometimes for several months at a time and there was no one to take my place.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

of further evidence it is not possible to expand on this subject. Nuer simply say that a man who commits such an offence will surely die. The ritual sanctions must be very effective.

Actions against Witches Today

In all cases of accusations of witchcraft appearing before modern Nuer courts of which I have any record, the accused was submitted to searching examination and evidence of a sort was taken. The facts seemed hard to prove, but by reference to the character of the accused (anything in the nature of incessant ill-temper, shrewishness, and general unpopularity backed by definite instances of misfortune among the accusers), the members of the court usually came to a decision. The matter was not treated lightly, and it is a fact that the large majority of such cases were dismissed as frivolous, and in some instances the plaintiff was punished for false accusation (*lorjok*)[1]. Sentences of imprisonment were sometimes inflicted, in most instances on women who were suffering ill-treatment from their neighbours and would be better out of the way for a while. Imprisonment, an idea entirely alien to the Nuer, somehow acted as a form of expiation or purification, and I have noted that in nearly all cases the woman went back to live unmolested among her neighbours.

Oaths

In connexion with Nuer religious beliefs which have bearing on the study of law and the procedure of courts today, oaths must be mentioned. The ceremony is usually performed by the Leopard-Skin Chief, who is called in for this purpose. There are two common forms of oath, the first called *kweng*, *kwil*, or *kap tang* ('to hold the spear-shaft'), which is used in a variety of circumstances, while *math* (literally, 'to drink') is the form often employed in cases of unconfessed homicide. The taking of an oath is not an individual process carried out by one man alone. In the former ceremony both accuser and accused are expected to take part, and it amounts to something of an ordeal between them; in the latter, where there is no known accused, those suspected and all their kinsmen are expected to participate.

It should be noted that the use of such oaths, especially in court, is not encouraged by the Government. Moreover, although the participants are often willing enough, the onlookers are afraid for them and nearly always persuade them to take some other course. Nuer chiefs and court members frown on the practice for this reason and not only because they know that the procedure is not in keeping with Government policy.

[1] See p. 70.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

Kap tang

695 In this ceremony, although the name *kap tang* refers to the spear of the Leopard-Skin Chief, the most important ritual association is clearly with the earth, and the ceremony amounts to a symbolic and sympathetic enactment of the process of burying the dead. A small hole is dug in the ground by the Leopard-Skin Chief, and this represents the grave; over it are placed sprigs of *Calotropis procera* and *Balanites aegyptiaca*, for these are usually placed over the newly buried dead as a protection against the diggings of hyenas. Over this hole the Leopard-Skin Chief puts his spear, while the disputants squat on either side and place their right hands on the spear-shaft and each swears his innocence or belief in the other's guilt as the case may be. It is believed that the one who is telling a lie will be seized with sickness possibly followed by death unless an antidote is applied. If either party falls ill he will hurry to the Leopard-Skin Chief, who reverses the process and thereby removes the contamination. Sometimes the ritual is less elaborate; the disputants simply pass under the outspread leopard-skin held by the owner.

Math

695 784 This is usually, but not always, applied in cases of homicide where the killer has not confessed or is quite unknown. It is performed by the Leopard-Skin Chief, who fills a gourd with milk from one of the cows belonging to the dead man. Those who protest their innocence are then expected to drink of the milk. This act openly defies the taboo on drinking or eating which automatically comes into operation between the hostile parties in a blood-feud. Indeed there could be no graver danger than drinking the milk of the dead man's cow if there is blood between them. Since contamination is extended to all kinsmen of the unknown killer, it is unlikely that anyone would agree to take the oath unless he was absolutely certain of the innocence of all his kin.

16: Evans-Pritchard E-5 (1931, 1936) 1956
FJ22 Nuer FJ22

The priest and one or two of his kinsmen escort the slayer to his neglected home where huts and byre are in disrepair and grass has grown up in courtyard and kraal. He consecrates an ox, preferably a black one or one with black markings, utters an invocation to God, saying that compensation has been paid and sacrifice made to remove the state of feud and asking that the slayer may now rest in peace in his own home. He sacrifices the ox, known as *yang miem*, the cow of the hair, because afterwards he cuts the slayer's hair or a token lock of it. It has not been cut or tended since the homicide. The priest then starts to hoe up the weeds in the kraal, and he and his kinsmen to clean up the homestead. He also kindles fire with fire-sticks (*piec mac*), lights three fires, sacrifices a goat, removes its intestinal fat, and places a piece of it on each fire where the flames consume it. The slayer is now rid of the *thung*, the blood-guilt, and can repair his byre and huts and settle down to normal life.

The leopard-skin priest also conducts the taking of oaths. A Nuer may at any time lick a spear or metal bracelet as a sign that he is speaking the truth, and I was told that a man would not do so if he were lying, though he might pretend to lick it. But formal rites of purgation are conducted by a priest. If a man denies that he has killed another he undergoes an ordeal by drinking milk from the herd of the dead man handed to him by the priest in the presence of the dead man's kin. Should he be lying he would die of *nueer*. To kill a man and not to confess to the killing is a heinous offence in Nuer eyes because it puts the kin on both sides in jeopardy. In questions other than homicide, which would usually, I think, concern rights in cattle, the priest digs a hole, representing a grave, and accuser and accused either step over it or take hold of the shaft of the priest's spear placed above it as they make their declarations. One declarations are made by them as they sit on the priest's leopard-skin. The priest then utters an invocation over a tethered victim that whoever is lying will die. The late Mr. Hamer, who witnessed this rite, told me that the priest caught the blood of the beast, a goat, in a gourd and mixed it with earth scraped from the ground in front of the skin. He placed a lump of this mixture in the mouths of the two men, who chewed and swallowed it. They then stood up and, facing one another, stepped across the skin. In a text written by a Nuer at the American mission, and sent to me by Dr. Mary Smith, the priest first addresses

16: Evans-Pritchard E-5 (1931, 1936) 1956
FJ22 Nuer FJ22

793 the victim, a sheep: 'now, sheep, thy blood is shed to death on
695 account of the man who is at fault'. He then calls on God: 'O God of heaven, God of our fathers, God who created all things, God of the universe, God of the flesh (*ring*), I call on thee to look upon these persons, that the man who is at fault may die. Now, I know that thou, O God, listenest to my speech (*rietda*).' If a guilty man who has taken an oath that he is innocent falls sick he gets the priest to sacrifice for him and give him medicines, promising reparation for the wrong he has done.

793 A leopard-skin priest is also, at any rate usually, called in to
782 sacrifice an ox if close relations commit incest. In cases of slighter
835 incest, between, that is, persons more distantly related, some lesser specialist, a diviner, or just the head of the family, performs the sacrifice, or the man who has committed incest himself sacrifices a cucumber or cuts in two the fruit of a sausage-tree. The priest consecrates the ox, makes an invocation over it to God that he may spare the partners to the sin and that the offence may depart with the blood of the victim. The beast is then held down on the ground and the priest inserts the point of his spear in its throat and cuts towards the breast. He severs the beast in twain, hacking its head in two with an axe. As he makes the final cuts the parties to the offence tug at the carcass on either side and pull it apart. One half is eaten by the priest and his friends and the other by the relatives of the principals, the principals themselves abstaining. The priest squeezes out the gall from the victim's gall-bladder into water in a gourd, adds *wal ruali*, incest-medicine, and the principals and their relatives drink this mixture.

793 Sacrifices in connexion with homicide, ordeals, and, at least
782 usually, serious incest are the exclusive domain of the leopard-skin priest. If he is called on to make sacrifice on other occasions it is because it is felt that his doing so adds weight to the intention; but it is not necessary that he should act and unless he happens to be a neighbour it is unlikely that he would be summoned.

[793] Since a good deal has been written about the importance of
789 'rain-makers' in this part of Africa it is perhaps wise to note also that the leopard-skin priest is never spoken about in relation to rain. When questioned, Nuer say that he might be asked to sacrifice for rain and to perform some other and minor ritual acts, such as putting a hyena's skull in water, to the same purpose; but they make it clear that they attach no great importance to these pro-